

2011 WL 11709993 (La.Civil D.Ct.) (Trial Pleading)
Civil District Court of Louisiana.
Orleans Parish

Bioclin BV, et al.,
v.
MULTIGYN USA, LLC, et al.

No. 1112225.
November 18, 2011.

Division "B"
Deputy Clerk

Petition for Damages and for Injunctive Relief

[Michael Martin](#) (La. No. 14171), [Stuart H. Smith](#) (La. No. 17805), Smith Stag, LLC, 365 Canal Street, Suite 2850, New Orleans, Louisiana 70130, Phone: (504) 593-9600, Facsimile: (504) 593-9601, for plaintiffs.

NOW INTO COURT, through undersigned counsel come Plaintiffs, Floris Koumans and BioClin B. V. (hereinafter "Plaintiffs") in the above numbered cause and for causes of action against Karl Bonga, Joyce Bonga and MultiGyn USA, LLC, (hereinafter "Defendants"), would show as follows:

I. Made Defendants herein are:

- a. Karl Bonga, an individual of full age of majority who upon information and belief is domiciled at 15036 Spinnaker Cove Lane, Winter Garden, FL 34787 who may be served pursuant to the Long-Arm Statute, [La. R.S. 13:3201 et seq.](#) at the same address.
- b. Joyce Bonga, an individual of full age of majority who upon information, and belief is domiciled at 360 East Randolph, Unit 1202 Chicago, IL 60610 who may be served pursuant to the Long-Arm Statute, [La. R.S. 13:3201 et seq.](#) at the same address.
- c. MultiGyn USA, LLC, a Florida limited liability corporation having its principal place of business and registered office at 15036 Spinnaker Cove Lane, Winter Garden, FL 34787 that may be served pursuant to the Long-Arm Statute, [La. R.S. 13:3201 et seq.](#), through its registered agent for service of process Mr. Karl Bonga, at the same address.

II. This action is within the jurisdiction of this court because the Defendant have marketed, sold and shipped the offending products into Orleans Parish, Louisiana.

III. Orleans Parish is a proper venue pursuant to [Louisiana Code of Civil Procedure Article 74](#) because wrongful conduct occurred and resultant damages were sustained within' Orleans Parish.

Plaintiffs will show that the defendants Karl Bonga, Joyce Bonga and MultiGyn "USA, LLC are liable unto it, jointly and *in solido*, for an amount as is justified in the premises, with legal interest from the date of judicial demand, until paid, and for all costs of these proceedings, for all the reasons set forth in these proceedings:

1.

BioClin B.V. is a Dutch corporation, which was founded in 1989 by Floris Koumans (1967, strategic management) and his mother, Annelize Goedbloed (1939, medical biologist). BioClin markets a range of feminine hygiene or gynecological products, including products under the name “Multi-Gyn”. Plaintiff Floris Koumans is BioClin's current Director. BioClin's Multi-Gyn products are sold in pharmacies and drug stores in over 30 countries. They are also sold over the Internet exclusively by BioClin and authorized distributors.

2.

BioClin's “Bio-active products” are the result of many years of clinical research. BioClin isolated and patented the bio-active substance referred to as 2QR (pronounce: ‘to cure’) or the 2QR-complex. It is a complex of polysaccharides that is derived from plants by molecular filtration and it forms the basis of all BioClin product formulations. BioClin's formulation, including its patented ingredient, comprises confidential and trade secret information from which BioClin derived independent economic value from it not generally being known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use.

3.

All of the products in the Multi-Gyn range have “Medical Device” registrations. The products are sometimes prescribed by gynecologists and general medical practitioners, and sometimes purchased and used by women on a “self-care” basis.

4.

Full information on the products is provided for consumers and healthcare professionals on BioClin's website, and many of BioClin's distributors operate similar websites in their local languages, so that consumers have ready access to relevant information. On all of its products, and in its product information leaflets, BioClin refers consumers to its websites for further information. This is essential for the consumer, as the Multi-Gyn products are often used at home in relation to gynecological problems, such as may occur during pregnancy or childbirth.

5.

BioClin holds Benelux, European Union, and international registrations of the trademark “MULTI-GYN”. The Benelux registration dates from December 21, 1995, and the Community Trademark from March 15, 2005. These registrations cover a variety of products in international classes 3 and 5, namely cosmetics; pharmaceutical and medicinal preparations, also for the treatment of gynecological disorders; homeopathic and phytotherapeutic medicines; hygienic and disinfecting; materials for dressings. The international registration covers the same products, and was registered on September 11, 2009. There are two designated countries, Australia and the United States. A copy of the certificates of registration are attached, *in globo*, as Exhibit “A”.

6.

In addition, BioClin has registered a figurative Community Trademark which looks like the outline of a stylized female form, a copy of which is attached as Exhibit “B”. This mark (“the figurative mark”) has been registered with effect from 2002.

7.

BioClin also holds a number of “Multi-Gyn” domain names. A copy of the registered domain names is attached as Exhibit “C”.

8.

At all times relevant, BioClin took reasonable measures and efforts under the circumstances to maintain the propriety of its trade name and trademarked products. Such measures included requiring distributors to “sign non-disclosure agreements and “safeguarding the proprietary formulation by not disclosing it.

9.

Defendant Joyce Bonga knew BioClin as a customer, buying the product via BioClin's website. In 2001 she contacted BioClin about selling the product in America. Marianne Allenspach, international sales manager at the time, followed up and proposed a distribution agreement based on minimum sales levels. A copy of the agreement is attached as Exhibit “D”.

10.

BioClin, B.V. and Joyce Bonga entered into a “Confidentiality and Secrecy Agreement” which became effective the date of the final signature on July 28, 2001. Pursuant to the agreement, Joyce Bonga agreed that she would not divulge confidential information.

2. Joyce Bonga agrees that it will maintain in confidence all confidential information disclosed by BioClin ... when this information can be used in a way that negatively influences the interests of BioClin. Joyce Bonga agrees that it will not divulge this information to any other party without the explicit written consent of BioClin and [she] shall take all necessary precautions to prevent such information from being disclosed to any unauthorized person, firm or company.

Included in the group of persons she was not to disclose information to is necessarily her husband Karl Bonga. A copy of the confidentiality and secrecy agreement is attached as Exhibit “E”.

11.

Only after Ms. Bonga reassured BioClin that she was sincere about faithfully distributing the product and would honor BioClin's conditions, BioClin perfected the distribution agreement (“agreement”) effective December 1, 2001, where Ms. Bonga agreed to distribute BioClin products wherein BioClin appointed Joyce Bonga as their sole and exclusive distributor in the USA, based upon minimum sales levels.

12.

Section 4.4 of the agreement clearly states:

Joyce Bonga hereby undertakes that it **will not at any time divulge any information in relation to BioClin's affairs or divulge any information in relation to trademarks or products ...**

13.

Upon information and belief, Karl Bonga was immediately aware of his wife's distribution agreement and the terms thereof. As the agreement indicates, it was executed at their marital domicile of 132 Wagon Wheel Lane, Barrington Hills, IL 60010. In addition, the two were lawfully married at the time, not having begun to live separate and apart until 2006.

14.

Upon information and belief, Karl Bonga registered the domain name “www.multigyn.com” on or around February 22, 2002, and began selling Multi-Gyn and MultiGyn products with the intent to deceive the **elderly** and female population that these products target. Defendants intended to profiting from BioClin patents, its marketing information, clinical research, trade names and trademarks and deceive unknowing customers by these deceptive and unfair practices.

15.

On May 3, 2004, BioClin formally terminated its agreement with Joyce Bonga, based in part on her failure to order the agreed minimum and failure to meet sales goals.

16.

Notwithstanding that termination of the relationship and formal notice, up till this very moment defendants refuse to cease using the “www.multigyn.com” website and transfer the domain name to BioClin although this was part of the confidentiality and secrecy agreement which had been signed by Plaintiff Floris Koumans and Mrs. Bonga and with Mr. Bonga's full knowledge of all the terms and restrictions therein. A copy of the demand letter sent to defendants is attached as Exhibit “F”

17.

In all cases, including that of Mrs. Bonga, the distributor signs an agreement with BioClin under which upon termination of the agreement, all aspects related to BioClin's trademarks (including websites, local registration, etc.) be delivered back to BioClin.

18.

Products labeled and marketed as “Multi-Gyn” and “MultiGyn”, have been sold on the Defendants' website after the termination of the BioClin's agreement with Mrs. Bonga. Defendants' use of “www.multigyn.com” has caused and will continue to cause consumer confusion. The statements of confused consumers is attached, *in globo*, as Exhibit “G”.

19.

Defendants have falsely claimed that the products marketed on their website are manufactured by BioClin and/or contain the same ingredients as BioClin's products. Defendants infringing website is attached as Exhibit “H”.

20.

The counterfeit products marketed by defendants through the website “www.multigyn.com”, have been presented as medical products, but have had no registration and have not been backed by clinical research. Products not supported by proper clinical research could be dangerous to the health of the consumer.

21.

BioClin has a proprietary interest in, among other things, 1) the trade name “MULTI-GYN” 2) the stylized female form; and 3) the BioClin formulation; however, substantial elements of Defendants' product packaging are identical to the packaging of Plaintiffs' products, intending to profit off of these proprietary items. In particular, both product packs have the expression

“Multi-Gyn” (or in the case of the defendant's product, “MultiGyn”) written in white lettering against a black rectangle background, with the rectangle and the written expression rotated 90° to the left. The figurative mark appears immediately to the right of the black rectangle, with the right hand side of the black rectangle merged into the left hand side of the figurative mark. Both product packs have at the bottom: “For the relief of vaginal discomforts”. Pictures of Plaintiffs' packaging and the nearly identical packaging used by Defendants is attached as Exhibit “I”.

22.

Upon information and belief, Karl Bonga stole the proprietary formula and other trade secrets and conveyed this information to a local manufacturing firm to make his own counterfeit version of Multi-Gyn.

23.

Upon information and belief, Karl Bonga is intentionally deceiving the public by claiming the patented ingredients are in the formula, when in fact they are not.

24.

In a December 12, 2006 Disclosure Statement filed in his divorce proceeding in the Circuit Court of Cook County Illinois, Karl Bonga listed himself as currently “self-employed” by “MultiGyn USA”. Mr. Bonga's representations to the Circuit Court of Illinois are an attempt to further this fraudulent scheme and find legal recognition for rights which he does not lawfully possess. A copy of Karl Bonga's disclosure statement is attached as Exhibit “J”.

25.

Long prior to the time of the agreement, the name “Multi-Gyn” was inherently distinctive, and had become further distinctive by acquiring secondary meaning, as it is very conspicuous, distinctive and individual consumers have been confused upon the introduction of the “MultiGyn” products to the internet.

26.

On October 7, 2011, Mr. Bonga officially and shamelessly formed a Florida company called “MultiGyn USA, LLC” (“MultiGyn”). A copy of the Unofficial Florida Secretary of State filing is attached hereto as Exhibit “K”.

27.

The Bongas also applied for and registered a website address for “MultiGyn USA” that was as similar as possible to BioClin's (BioClin's is “www.multi-gyn.com”; MultiGyn USA's is “www.multigyn. com”).

28.

In misappropriating the “MultiGyn” name for their counterfeit products, the Bongas and MultiGyn USA, LLC have made it possible for Mr. Koumans to be held liable for a product that he did not manufacture.

29.

The Bongas' and MultiGyn's intention was to steal Multi-Gyn's trade name, product formulation, goodwill and reputation and to confuse Multi-Gyn past, present and potential customers, and the general public. The defendants use of Multi-Gyn name presents an obvious likelihood of confusion.

30.

The significantly fraudulent operation run by Defendants are significantly impairing the Plaintiffs' planned expansion into the United States market. Upon information and belief, the Bongas' knew of this expansion and of the **elderly** female market in the United States that these products were intended to target, and have continued to significantly profit from and **exploit** the goodwill and reputation of BioClin within this population.

31.

In all, the defendants have committed the following non-exclusive list of particulars:

- A) Breach of Contract, including Failure of Cause and Consideration;
- B) Unfair and Deceptive Trade Practices, as defined in [La. RS 51:1401 et seq](#), the Unfair Trade Practices Law;
- C) Fraud;
- D) Misappropriation and Theft;
- E) Trade Name Infringement under [La. R.S. 51:211](#) and 222, and related laws;
- F) Misrepresentation;
- G) Unjust Enrichment;
- H) Other acts which will be proven at trial.

32.

As a result of the defendants' actions, BioClin and Mr. Floris Koumans have suffered the following non-exclusive list of damages and are entitled to the following non-exclusive relief:

- A) Lost Income and Lost Profits of more than \$250,000 under [La. R.S. 51:223](#) and other laws;
- B) Loss of Goodwill and Loss of Reputation;
- C) Customer Confusion;
- D) Mental anguish and anxiety;
- E) Injunctions as outlined below;
- F) Injury to Business Reputation under [La. R.S. 51:223.1](#);

G) Dilution, under [La. R.S. 51:223.1](#);

H) Attorney Fees; and

I) Other damages not known at this time.

33.

Defendants have been unjustly enriched at the expense of Floris Koumans and BioClin as a result of their marketing and sale of products that are identical to BioClin's proprietary ingredients, trade name and trademarks.

34.

Defendant Joyce Bonga, Karl Bonga and MultiGyn USA and MultiGyn USA, LLC's improper disclosure and use of BioClin's proprietary formulations and trade secrets and their formation and operation of [www.multigyn.com](#) to commercially **exploit** the technology and trade secrets in competition with the interest of BioClin violates Louisiana's Unfair Trade Practices and Consumer Protection Law, [La. R.S. 51:1401, et seq.](#), entitling Floris Koumans to recover his actual damages, reasonable attorneys' fees and costs.

35.

Under [La. R.S. 51:223](#) and [La. C.C.P. Art. 3601](#), Mr. Koumans and BioClin are entitled to enjoin MultiGyn USA, LLC and the Bongas from speaking, using or displaying the names "MultiGyn USA, LLC" or "MultiGyn" in any way, including but not limited to enjoining the use of "[www.multigyn.com](#)" because of 1) its likelihood of confusing customers with BioClin's web address of "[www.multi-gyn.com](#)"; 2) because of its intent to deceive the public and 3) because of its irreparable harm to BioClin's property and reputation. *See Gulf Coast Bank v. Gulf Coast Bank & Trust Company*, 652 So 2d 1306, 1323 (La 1995).

36.

Under [La. R.S. 51:223.1](#), Plaintiffs are entitled to enjoin Defendants from using any form of the trade name "MultiGyn". After adequate discovery, Floris Koumans and BioClin reserve their right to amend their petition.

WHEREFORE, plaintiffs BioClin B.V. and Floris Koumans pray:

1) That the Court issue a preliminary injunction against defendants Karl Bonga, Joyce Bonga and MultiGyn USA, LLC under the following terms:

A) Upon the first to occur of 1) the Court's oral words of judgment in open court or 2) immediately after the signing of the Court's judgment, defendants must stop, cease, desist and refrain from speaking, using or displaying the names "MultiGyn USA", "MultiGyn", BioClin, Lubri-care, bio-active, and any BioClin trade mark, including but not limited to the stylized female form, in any way, including but not limited to using or displaying the name on products manufactured, obtained, sold, marketed, or prepared by defendants; and

B) Defendants must cease all sales of the offending products, and cease use of the domain name "[www.multigyn.com](#)" and any internet sales website.

C) That a hearing on the Preliminary injunction be set on December 16, 2011.

2)) That the Court issue an injunction against defendants Karl Bonga, Joyce Bonga and MultiGyn USA, LLC under the following terms:

A) Upon the first to occur of 1) the Court's oral words of judgment in open court or 2) immediately after the signing of the Court's judgment, defendants must stop, cease, desist and refrain from speaking, using or displaying the names "MultiGyn USA", "MultiGyn", BioClin, Lubri-care, bio-active, and any BioClin trade mark, including but not limited to the stylized female form, in any way, including but not limited to using or displaying the name on products manufactured, obtained, sold, marketed, or prepared by defendants; and,

B) Defendants must cease all sales of the offending products, and cease use of the domain name "www.multigyn.com" and any internet sales website.

C) That the Court Defendants transfer the domain "www.multigyn.com" to BioClin in keeping with the terms of the non-disclosure agreement.

3) That the Court find that after due proceedings are had, there be judgment in favor of the Plaintiffs BioClin B.V. and Floris Koumans, and against the defendants, jointly and *in solido*, for an amount as justified in the premises, together with legal interest from the date of judicial demand, until paid, and for attorney fees and for all costs of these proceedings, and for all other relief the court deems reasonable.

Respectfully submitted,

<<signature>>

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